

Message Text

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DRAFTED BY EB/TT/MA:JPSTEINMETZ/L/EB:FKWILLIS:

APPROVED BY EB/TT/MA:JPSTEINMETZ

L/UNA:RESTOWE (SUBS. PARA 1)

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E.O. 11652: N/A

TAGS: EWWT, EFIN, OECD

SUBJECT: SECOND EXCOM MEETING ON UN CODE OF CONDUCT,
APRIL 24

REF: OECD 10133

1. FACT THAT BOTH UNCTAD LEGAL ADVISOR'S OFFICE AND UN
LEGAL COUNCIL ARE RELUCTANT TO AND HAVE STRONG RESERVATIONS
ON BECOMING INVOLVED IN CLARIFICATION OF UN LINER CODE BE-
CAUSE OF CONTENTIOUS NATURE OF ISSUE DOES NOT APPEAR TO
DEPARTMENT TO BE SUFFICIENT JUSTIFICATION TO DROP MATTER.
RE POSSIBLE REFERRAL MECHANICS, USUN LEGAL ADVISOR STATES
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HE UNAWARE OF PRECEDENT FOR THIS TYPE OF ACTION VIS-A-VIS

UN LEGAL OFFICE, GIVEN ITS RESPONSIBILITY MAINLY FOR LEGAL BACKSTOPPING UN ORGANS DURING COURSE OF DELIBERATIONS AND BELIEVES LEGAL ADVISOR WOULD NOT CONSENT TO GIVE OPINION BECAUSE, INTER ALIA, UNFAMILIARITY WITH SUBJECT MATTER. MOREOVER, HE ALSO QUESTIONS APPROPRIATENESS GIVEN FACT OECD IS NON-UN ENTITY. ON OTHER HAND, L/UNA AND L/EB IN DEPARTMENT SEE NO REASON WHY A COUNTRY OR COUNTRIES COULD NOT REQUEST CLARIFICATION. ALL (L/USUN, L/EB AND L/UNA) AGREE THAT SINCE CONVENTION PREPARED UNDER UNCTAD AUSPICES, IT WOULD BE MORE PLAUSIBLE THAT UNCTAD, BECAUSE

OF CLOSER IDENTITY WITH CODE, MIGHT FEEL OBLIGATION TO RESPOND TO REQUEST FOR INTERPRETATION. IN OTHER WORDS, WHILE THERE APPEARS TO BE A QUESTION FROM THE STANDPOINT OF PRECEDENT, THIS, IN ITSELF, DOES NOT APPEAR TO PRECLUDE LIKE-MINDED COUNTRIES FROM ASKING FOR CLARIFICATION. REQUEST COULD BE IN FORM OF LETTER TO UNCTAD SECRETARY GENERAL FROM A GOVERNMENT MISSION IN GENEVA ACTING ON BEHALF AND IDENTIFYING OTHER INTERESTED GOVERNMENTS. IT WOULD BE UP TO UNCTAD LEGAL ADVISOR TO DECIDE WHETHER TO RESPOND. CONSIDERING INITIAL NEGATIVE REACTION, HE COULD IN FACT ELECT NOT TO DO SO. ON THE OTHER HAND, IF A SUFFICIENT NUMBER OF LIKE-MINDED COUNTRIES WERE INVOLVED, LEGAL ADVISOR MIGHT FIND IT DIFFICULT TO IGNORE OVERTURE.

2. DEPARTMENT BELIEVES ABOVE APPROACH IS WORTH FURTHER CONSIDERATION AND EFFORT ON GROUNDS UNCTAD INTERPRETATION, WHILE NOT AUTHORITATIVE OR BINDING, COULD HAVE MORE WEIGHT ATTRIBUTED TO IT THAN A REPORT FROM UK PROPOSED AD HOC GROUP. DEPARTMENT REMAINS UNCLEAR AS TO WHAT ADVANTAGES THERE ARE FOR US IN UK PROPOSAL FOR AD HOC LEGAL GROUP REPORT WITHIN PROPOSED TIME FRAME OF JUNE 15, 1975, AND WOULD APPRECIATE EXPLANATION OF UK REASONING. WE WOULD ALSO LIKE TO KNOW IF OTHER LIKE-MINDED COUNTRIES ARE AS ENTHUSIASTIC AS THE BRITISH ABOUT THE AD HOC GROUP, IN PARTICULAR NORWAY AND DENMARK. IF OTHER LMC'S ARE NOT ENTHUSIASTIC, WE THINK THEY SHOULD BE MARTIALED TO PULL UK OFF ITS AD HOC GROUP PROPOSAL. OUR POSITION, IN ABSENCE OF CONVINCING REASONS FOR UK PROPOSAL, COMES DOWN TO THIS: (1) IT WOULD BE HELPFUL TO HAVE SUBJECT LIMITED OFFICIAL USE

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REFERRED TO UNCTAD LEGAL SECRETARIAT FOR OPINION; (2) LACKING SUPPORT FROM A NUMBER OF LMC'S FOR REQUEST TO UNCTAD LEGAL SECRETARIAT, DOING NOTHING FURTHER WITH RESPECT TO NEW STUDIES ON SUBJECT APPEARS NEXT BEST ALTERNATIVE.

3. IN THE EVENT YOU ARE UNABLE TO ACHIEVE SUPPORT FOR REFERRAL TO UNCTAD OR UN AS LAST RESORT, WE ARE PREPARED TO DROP THIS APPROACH. MISSION MAY GO ALONG WITH

UK PROPOSAL FOR AD HOC GROUP BUT ONLY IF IT FEELS ACTING
OTHERWISE WOULD HAVE ADVERSE IMPLICATIONS, I.E. UNDERCUT
COMMON APPROACH WITH OTHER LIKE-MINDED COUNTRIES. KISSINGER

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